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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

s1 07 CR 862 (AKH) (RLE)  
Plea

5  
6 DANIEL BARRERA BARRERA,

7 Defendant.  
8

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9  
10 New York, N.Y.  
November 20, 2014  
10:55 a.m.

11  
12 Before:

13 HON. RONALD L. ELLIS,

14 Magistrate Judge

15 APPEARANCES

16 PREET BHARARA

17 United States Attorney for the  
Southern District of New York

18 BENJAMIN A. NAFTALIS

JENNA M. DABBS

19 Assistant United States Attorneys

20 RUBEN OLIVA

Attorney for Defendant

21  
22 ALSO PRESENT: DAVID MINTZ, Interpreter (Spanish)

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(Case called)

MR. NAFTALIS: Good morning, your Honor. Benjamin Naftalis and Jenna Dabbs, for the government.

THE COURT: Good morning.

MR. OLIVA: Good morning, your Honor. Ruben Oliva, on behalf of Daniel Barrera Barrera, who is prepared to proceed, with the assistance of the interpreter.

THE COURT: Good morning. Are we ready to proceed?

MR. OLIVA: Yes, your Honor.

MR. NAFTALIS: Yes, your Honor.

THE COURT: It's a felony plea. What is the defendant pleading to?

MR. NAFTALIS: Your Honor, he's going to be pleading to Count One of the indictment, it's a one-count indictment, but solely to one of the objects of the indictment. The indictment charges two objects of the narcotics conspiracy, and he's only going to be pleading to the objects set forth in paragraph 14 of the indictment, which is the 959, or distribution with the knowledge and intent that the cocaine be imported into the United States.

MR. OLIVA: Your Honor, with all due respect to the government, my client is going to be pleading to the entire indictment, to every object of the conspiracy, to every count, to every allegation contained in the indictment. The grand jury has charged him, and that's what we will be pleading to,

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1 what the grand jury has charged him, regardless of what the  
2 government would like him to plead to.

3 MR. NAFTALIS: Your Honor, there's no agreement  
4 between the parties and it's the defendant's right to plead as  
5 he wishes.

6 THE COURT: I usually use the plea agreement as my  
7 guide to what he's been charged with. The paragraph in the  
8 plea agreement that talks about conspiracy to import and  
9 conspiracy to manufacture and distribute, are those the two  
10 elements that we're talking about?

11 MR. OLIVA: Your Honor, just to clarify, there is no  
12 plea agreement. The government had filed a Pimentel letter.  
13 We don't necessarily agree with it; we don't have to. We are  
14 pleading openly to the indictment.

15 THE COURT: I understand it is a Pimentel letter.  
16 Nevertheless, it is whatever is in there, in that paragraph.  
17 Do you know the paragraph we're talking about?

18 MR. NAFTALIS: Your Honor, the paragraph in the  
19 Pimentel?

20 THE COURT: Yes.

21 MR. NAFTALIS: It sets forth the two objects that are  
22 set forth in the indictment.

23 MR. OLIVA: That's correct.

24 MR. NAFTALIS: Mr. Oliva represented the defendant  
25 wants to plead to both objects and those two objects are set

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1     forth in the letter you're looking at.

2             MR. OLIVA: That is correct.

3             THE COURT: Because I don't generally have any  
4     independent knowledge of what the maximums are, if it's not in  
5     the letter or communication between the parties, somebody's  
6     going to have to recite it. But you're saying that's okay.

7             MR. OLIVA: Yes.

8             THE COURT: You agree on that.

9             MR. OLIVA: Yes. The objects, whether it's one or  
10    both, don't affect the statutory maximums.

11            THE COURT: Okay.

12            MR. OLIVA: Which is life imprisonment.

13            MR. NAFTALIS: We agree, your Honor.

14            THE COURT: All right. Mr. Barrera, are you having  
15    any difficulty hearing through the earphones?

16            THE DEFENDANT: No, your Honor. Everything's fine.

17            THE COURT: Mr. Barrera, did you sign a consent to  
18    proceed before a United States magistrate judge on your felony  
19    plea allocution?

20            THE DEFENDANT: Yes, your Honor.

21            THE COURT: And was that process explained to you?

22            THE DEFENDANT: Yes, your Honor.

23            THE COURT: Before you signed the consent, did you  
24    discuss it with your attorney?

25            THE DEFENDANT: Yes, your Honor.

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1 THE COURT: Did you have the assistance of an  
2 interpreter?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Did your attorney explain the consent to  
5 you?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Do you understand that you have an  
8 absolute right to have this proceeding before a United States  
9 district judge?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: And you're voluntarily proceeding before a  
12 United States magistrate judge?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: Mr. Barrera, you are charged in a  
15 one-count indictment. That indictment charges you with  
16 conspiracy to import into the United States five kilograms and  
17 more of mixtures and substances containing a detectable amount  
18 of cocaine and manufacture and distribution of five kilograms  
19 and more of mixtures and substances containing detectable  
20 amounts of cocaine, intending and knowing that such substances  
21 would be imported into the United States. This conduct  
22 violates Title 21, United States Code, Sections 812, 952(a),  
23 959, 960(b)(1)(B), and 963. The conduct alleged is from in or  
24 about 1998 through April of 2010.

25 This charge carries a maximum term of imprisonment of

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1 life; a mandatory minimum term of imprisonment of ten years; a  
2 maximum term of supervised release of life; a mandatory minimum  
3 term of supervised release of five years; a maximum fine, which  
4 is the greatest of either \$10 million, or twice the gross  
5 pecuniary gain derived from the offense or twice the gross  
6 pecuniary loss to persons other than yourself as a result of  
7 the offense. There's a \$100 mandatory special assessment. Do  
8 you understand these penalties as I've read them to you?

9 THE DEFENDANT: Yes, your Honor. I understand them  
10 very well.

11 THE COURT: Mr. Barrera, do you also understand that  
12 if you are sentenced to any period of supervised release and  
13 violate the conditions of your supervised release, you may be  
14 sentenced to all or part of the term of supervised release  
15 without any credit for time already served?

16 THE DEFENDANT: Yes, your Honor. I do.

17 THE COURT: Mr. Barrera, are you a citizen of the  
18 United States?

19 THE DEFENDANT: Colombia.

20 THE COURT: Mr. Barrera, do you understand that  
21 because you're not a citizen of the United States, after you  
22 have served any sentence imposed by the Court, you are subject  
23 to being deported and that in all likelihood, after serving a  
24 sentence, you will in fact be deported?

25 THE DEFENDANT: Your Honor, I understand that very

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1 well.

2 THE COURT: Daniel Barrera Barrera, how do you plead?

3 THE DEFENDANT: Guilty, your Honor.

4 THE COURT: Mr. Barrera, before I can recommend that  
5 your guilty plea be accepted to these charges, I must determine  
6 that you understand the plea and its consequences, that the  
7 plea is voluntary, and that there is a factual basis for the  
8 plea. For that purpose, I must ask you a number of questions  
9 and your answers must be under oath. Do you understand that  
10 the answers you give under oath may subject you to prosecution  
11 for perjury if you do not tell the truth?

12 THE DEFENDANT: I understand very well, your Honor.

13 THE COURT: Raise your right hand.

14 (Defendant sworn)

15 THE COURT: Thank you.

16 THE DEFENDANT: Thank you, your Honor.

17 THE COURT: Please state your full name for the  
18 record.

19 THE DEFENDANT: Daniel Barrera Barrera.

20 THE COURT: What is your date of birth?

21 THE DEFENDANT: November 6, 1968.

22 THE COURT: How many years of schooling do you have?

23 THE DEFENDANT: None, your Honor.

24 THE COURT: You've never been to school?

25 THE DEFENDANT: Never, your Honor.

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1 THE COURT: Do you have any difficulty understanding  
2 what's happening today?

3 THE DEFENDANT: No, your Honor. I'm fine.

4 THE COURT: You have had enough time to discuss this  
5 with your attorney?

6 THE DEFENDANT: I have had enough time, your Honor.

7 THE COURT: Do you understand what the government says  
8 that you did?

9 THE DEFENDANT: Yes, your Honor. I understand very  
10 well.

11 THE COURT: Do you understand that you have a right to  
12 plead not guilty?

13 THE DEFENDANT: I understand very well, your Honor.

14 THE COURT: Do you understand that you have a right to  
15 a trial by jury on these charges?

16 THE DEFENDANT: Yes, your Honor. I understand very  
17 well.

18 THE COURT: Do you understand that if you were to  
19 plead not guilty and go to trial, you would be presumed  
20 innocent until the government proved your guilt beyond a  
21 reasonable doubt?

22 THE DEFENDANT: I understand very well, your Honor.

23 THE COURT: Are you currently being treated by a  
24 doctor or psychiatrist for any reason?

25 THE DEFENDANT: No, your Honor.



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1 THE COURT: Have you taken any medications in the last  
2 24 hours?

3 THE DEFENDANT: No, your Honor.

4 THE COURT: Are you feeling all right today?

5 THE DEFENDANT: Fine, your Honor. I feel fine.

6 THE COURT: Are you having any difficulty seeing,  
7 hearing, or understanding any of these proceedings?

8 THE DEFENDANT: No. No, your Honor. I'm fine.

9 THE COURT: Is there any reason why you could not make  
10 a knowing and voluntary plea today?

11 THE DEFENDANT: No. I'm fine, your Honor.

12 THE COURT: Mr. Barrera, do you understand that  
13 because you have a right to a trial, at a trial, you would have  
14 a number of important constitutional rights, including the  
15 right to be represented by counsel and to have counsel  
16 appointed for you if you cannot afford an attorney?

17 THE DEFENDANT: I understand very well, your Honor.

18 THE COURT: Do you understand, Mr. Barrera, that you  
19 have a right to have an attorney at every stage of the criminal  
20 proceedings?

21 THE DEFENDANT: I understand very well, your Honor.

22 THE COURT: Do you understand that at trial, you  
23 cannot be forced to testify against yourself?

24 THE DEFENDANT: I understand very well, your Honor.

25 THE COURT: Do you understand that at trial, you would

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1 have the right to confront and cross-examine witnesses called  
2 by the government?

3 THE DEFENDANT: I understand very well, your Honor.

4 THE COURT: Do you understand that at trial, you would  
5 have the right to testify yourself and the right to call  
6 witnesses on your behalf and to compel their attendance by  
7 subpoena, if necessary?

8 THE DEFENDANT: I understand very well, your Honor.

9 THE COURT: Do you understand that if your guilty plea  
10 is accepted, there will be no trial of any kind and the only  
11 remaining steps in your case will be a presentence report and  
12 sentencing by Judge Hellerstein?

13 THE DEFENDANT: I understand very well, your Honor.

14 THE COURT: Have you discussed with your attorney the  
15 role that the Sentencing Guidelines play in sentencing?

16 THE DEFENDANT: Yes, your Honor. I've discussed it  
17 well with him.

18 THE COURT: Do you understand that there will be a  
19 calculation in your case under those guidelines?

20 THE DEFENDANT: Yes, your Honor. I understand it very  
21 well.

22 THE COURT: Do you understand that the calculation  
23 under the guidelines will take into account a number of  
24 factors, including the actual conduct in which you engaged, any  
25 victims of the offense, the role that you played in the

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1 offense, whether or not you have accepted responsibility for  
2 your acts, whether you have any criminal history, and whether  
3 you have engaged in any obstruction of justice? Do you  
4 understand that?

5 THE DEFENDANT: I understand very well, your Honor.

6 THE COURT: Have those factors been explained to you  
7 by your attorney?

8 THE DEFENDANT: It was explained very well, your  
9 Honor.

10 THE COURT: Between now and the date of sentencing,  
11 the probation department will conduct an investigation and will  
12 prepare a presentence report. Your attorney, the government,  
13 and Judge Hellerstein will receive copies. Both your attorney  
14 and the government will have the opportunity to object if they  
15 believe anything in this report is inaccurate. Do you  
16 understand that?

17 THE DEFENDANT: I understand very well, your Honor.

18 THE COURT: Do you understand that until the  
19 presentence report is prepared, neither your attorney nor the  
20 government nor Judge Hellerstein will be able to determine  
21 precisely what range will be calculated under the guidelines?

22 THE DEFENDANT: I understand very well, your Honor.

23 THE COURT: Do you understand that whatever the range  
24 under the guidelines, the penalties in your case, including  
25 incarceration and fines and otherwise, cannot exceed the

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1 maximums that I advised you of earlier?

2 THE DEFENDANT: I understand very well, your Honor.

3 THE COURT: Do you understand that whatever the range  
4 under the guidelines, Judge Hellerstein will still retain  
5 discretion as to the actual penalties to be imposed in your  
6 case?

7 THE DEFENDANT: I understand very well, your Honor.

8 THE COURT: Do you understand that in addition to the  
9 guidelines, Judge Hellerstein will also take into account the  
10 factors that are set forth in 18, United States Code, Section  
11 3553(a)?

12 THE DEFENDANT: I understand very well, your Honor.

13 THE COURT: Have those factors been explained to you  
14 by your attorney?

15 THE DEFENDANT: He explained them to me very well,  
16 your Honor.

17 THE COURT: Do you understand that under certain  
18 circumstances, both you and the government may have a right to  
19 appeal the sentence imposed?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Do you understand that if the sentence is  
22 more severe than you expected, you will be bound by your guilty  
23 plea and will not be permitted to withdraw it?

24 THE DEFENDANT: I understand very well, your Honor.

25 THE COURT: Do you understand that parole has been

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1 abolished and that if you're sentenced to any period of  
2 imprisonment, you will be required to serve the entire term?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Mr. Barrera, has anyone made any promises  
5 to you to influence you to plead guilty?

6 THE DEFENDANT: No, your Honor.

7 THE COURT: Has anyone promised you a specific  
8 sentence if you plead guilty?

9 THE DEFENDANT: No, your Honor.

10 THE COURT: Have any threats been made to you by  
11 anyone to influence you to plead guilty?

12 THE DEFENDANT: No, your Honor.

13 THE COURT: Are you making this plea voluntarily, of  
14 your own free will and choice?

15 THE DEFENDANT: Yes, your Honor. I plead guilty.

16 THE COURT: Mr. Barrera, the government has sent to  
17 your attorney something called a Pimentel letter. In this  
18 letter, the government indicates its calculation as to what the  
19 Sentencing Guidelines would be and, according to the  
20 government, the range in your case would be life imprisonment.  
21 Do you understand that's the calculation the government has?

22 THE DEFENDANT: I understand it very well, your Honor.

23 THE COURT: Elements of the offense.

24 MR. NAFTALIS: Yes, your Honor. With respect to Count  
25 One of the indictment, S1 07 CR 862, the elements of the

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1 offense are as follows: First, that there was a conspiracy or  
2 agreement between two or more persons to violate the narcotics  
3 laws of the United States; second, that the defendant knowingly  
4 became a member of or joined that conspiracy or agreement;  
5 third, that the object of that conspiracy was to manufacture  
6 and distribute a controlled substance knowing or intending that  
7 the substance would be imported into the United States. And I  
8 assume based on counsel's representation, in addition, that  
9 said narcotics would also be imported into the United States  
10 from a distance outside the U.S. or its territorial waters;  
11 and, fourth, that the amount of the controlled substance  
12 exceeded five kilograms of cocaine. In this case, your Honor,  
13 the government would proffer it would be in excess of 360,000  
14 kilograms or 400 tons of cocaine.

15 As to venue, your Honor, that the defendant first  
16 entered a U.S. judicial district, this district, when he was  
17 extradited from Colombia to Stewart Air Force base in White  
18 Plains, New York.

19 THE COURT: Mr. Barrera, did you hear the elements of  
20 the offense?

21 THE DEFENDANT: Yes, your Honor. I heard it very  
22 well.

23 THE COURT: Do you understand that if the government  
24 were to proceed to trial against you, it would have the burden  
25 of proving each and every element of the offense beyond a

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1 reasonable doubt?

2 THE DEFENDANT: I understand very well, your Honor.

3 THE COURT: Daniel Barrera, did you commit the offense  
4 with which you've been charged?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Tell me what you did.

7 THE DEFENDANT: Your Honor, I agreed with more than  
8 two other people to manufacture, distribute, and export  
9 kilograms of cocaine, knowing that they would eventually be  
10 imported into the United States.

11 THE COURT: When did this take place?

12 THE DEFENDANT: From 1998 to 2000, your Honor.

13 THE COURT: And you knew it was a conspiracy involving  
14 these drugs?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: And nobody forced you to participate in  
17 the conspiracy?

18 THE DEFENDANT: No. I was not forced to do it, your  
19 Honor.

20 THE COURT: And you knew what you were doing was  
21 wrong?

22 THE DEFENDANT: Yes, your Honor. I did know.

23 THE COURT: And did it involve more than five  
24 kilograms of cocaine?

25 THE DEFENDANT: Yes, your Honor.

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1 THE COURT: Other questions the government wishes me  
2 to allocute on?

3 MR. OLIVA: I think we want you to, if you could, ask  
4 him the relevant dates again.

5 THE COURT: What were the dates that this occurred,  
6 Mr. Barrera?

7 THE DEFENDANT: 1998 to 2011.

8 THE COURT: Anything else?

9 MR. NAFTALIS: As to the factual proffer, nothing  
10 further, your Honor.

11 THE COURT: Does either counsel know of any reason why  
12 I should not recommend this plea?

13 MR. NAFTALIS: Not from the government, your Honor.

14 MR. OLIVA: Not from the defense, your Honor.

15 THE COURT: Based on the defendant's allocution, I  
16 find that he understands the nature of the charges and the  
17 consequences of his guilty plea. I also find that the plea is  
18 voluntary and that there is a factual basis for the plea. I,  
19 therefore, recommend that the plea be accepted and direct that  
20 a presentence report be prepared.

21 Sentencing will take place before Judge Hellerstein  
22 on -- do you have a date?

23 MR. NAFTALIS: February 27 at 11:30, your Honor.

24 Just to clarify, your Honor, would your Honor confirm  
25 with the defendant that he's reviewed the indictment with



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1 counsel and that he's satisfied with the explanation provided  
2 by counsel as to the charges? Just to be safe. Thank you.

3 THE COURT: Mr. Barrera, did you review the indictment  
4 with your attorney?

5 THE DEFENDANT: Yes, your Honor. We reviewed it very  
6 well.

7 THE COURT: And he explained it to you?

8 THE DEFENDANT: Yes, your Honor. And he explained it  
9 very well.

10 THE COURT: Do you understand what the indictment  
11 charges you with doing?

12 THE DEFENDANT: I understand very well, your Honor.

13 THE COURT: Anything else from either side?

14 MR. NAFTALIS: No. Thank you, your Honor.

15 MR. OLIVA: No, your Honor.

16 THE DEFENDANT: Thank you, your Honor.

17 THE COURT: The government will do the prosecution  
18 case summaries in the next 14 days?

19 MR. NAFTALIS: Absolutely.

20 THE COURT: And defense counsel will make himself  
21 available for probation for interview. If there's nothing  
22 further, then we are adjourned.

23 MR. NAFTALIS: Thank you, your Honor.

24 MR. OLIVA: Thank you, your Honor.

25 (Adjourned)